In the High Court of Judicature at Madras

Dated: 06.12.2006

Coram:

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice S.TAMILVANAN

Writ Petition No.17511 of 1999

S.S.Rajasekar ..Petitioner

..vs..

1. The Union of India, rep.by
   Secretary to Government,
   Ministry of Home Affairs,
   New Delhi.

2. The Director General,
   Central Industrial Security Force,
   Ministry of Home Affairs,
   Block No.13, C.G.'s Complex,
   Lodhi Road,
   New Delhi-3. ..Respondents

Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in his Proceedings No.V.11014/29/91/L&R/CISF/ Pers.I/MHA dated 24.06.1999, quash the same and direct the respondents to reinstate the petitioner in service with all attendant benefits.

For Petitioner : Mr.K.N.Nataraaj

For Respondents : Mr.S.Udayakumar,
SCGSC.,

ORDER

(Order of the Court was made by P.SATHASIVAM,J.,)

Aggrieved by the order of the 1st respondent-Union of India, Ministry of Home Affairs, New Delhi, dated 24.06.1999, dismissing the

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appeal of the petitioner and confirming the order of dismissal from service, the petitioner has filed the above writ petition.

2. Heard the learned counsel for the petitioner as well as the respondents.

3. In view of the limited relief sought for in the writ petition, namely, quashing of the order passed by the 1st respondent, we have to consider the order of the 1st respondent dated 24.06.1999. The petitioner, while serving at Central Industrial Security Force (hereinafter referred to as "CISF") Unit, ASP Durgapur, was dealt with under Rule 34 of CISF Rules, 1969 for the following two charges.

> "Article of charge No.I
> No.8317246 constable S.S.Rajasekhar of CISF Unit, ASP Durgapur remained absent from unit lines from about 2250 hrs on 4.4.88 to 19.5.88 without any leave or permission from his superior authority, amounting to gross indiscipline, misconduct and unbecoming of a member of CISF.
> Article of Charge No.II
> That the said No.8317246 Constable S.S.Rajasekhar of CISF Unit, ASP Durgapur was issued call up notice dated 9.4.88 but he neither informed his whereabouts to the office nor returned immediately but continued to remain absent unauthorisedly upto 19.5.88".

4. It is not in dispute that a departmental enquiry was conducted and the Enquiry officer found him guilty of Charge No.1 only and Charge No.2 was not proved against him. Based on the report of the Enquiry Officer, the disciplinary authority, imposed a punishment of dismissal from service. Aggrieved by the said order, the petitioner preferred an appeal to the 1st respondent. Since the 1st respondent passed a non-speaking order, this court, in W.P.No.8341 of 1993 by order dated 15.03.1999, set aside the same and remitted the matter to the 1st respondent for passing speaking fresh order. Pursuant to the said direction, the 1st respondent has passed the impugned order dated 24.06.1999.

5. After taking us through the said order of the 1st respondent, learned counsel for the petitioner contended that for absence for a period of 46 days without leave or prior permission from his superior authority, the petitioner was dismissed from service and the 1st respondent has not considered the proportionality in awarding punishment. On the other hand, learned counsel appearing for the respondents contended that in view of the Rules and of the fact that the disciplinary authority accepted the finding of the Enquiry Officer and imposed appropriate punishment, which was confirmed by the 1st respondent, there is no valid ground for interference.

6. We have carefully considered the rival contentions.

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7. As said earlier, in view of the limited relief sought for in the writ petition, we cannot go into the merits and demerits of the order passed by the original authority, imposing a punishment, namely, dismissal from service. Accordingly, we are concerned about the order dated 24.06.1999 passed by the 1st respondent. It is not in dispute that the second charge levelled against the petitioner was not proved. The first charge relates to overstayal for a period of 46 days without leave or prior permission from his superior authority. Though this time, i.e., after remand, the 1st respondent has passed a speaking order adverting to the grounds raised in the appeal, admittedly, there is no reference to the quantum of punishment. Though in para 6(iv) of the impugned order, the 1st respondent has stated that the petitioner was awarded six punishments in the past during his service of about seven years for his various acts of misconduct and indiscipline, admittedly, no details about the same have been furnished. It is not clear whether those punishments are minor or mere warning or Censure, etc. In those circumstances, we are of the view that the 1st respondent is not justified in placing reliance on six punishments said to have been suffered by the petitioner. Apart from this, as pointed out earlier, the only allegation against the petitioner is that he overstayed for a period of 46 days without prior leave or permission. Whether, for such act, dismissal from service is warranted or not, has not at all been considered by the 1st respondent though referred to the proceedings of the Enquiry Officer and the conclusion of the disciplinary authority. We are conscious of the fact that the petitioner was in more disciplined Force. At the same time, in view of the statutory Rules, various types of punishments depending on the gravity of the proved charges, we are of the view that it is but proper on the part of the 1st respondent to go into the aspect, namely, whether the punishment awarded by the disciplinary authority is proportionate to proved charges. Though the learned counsel submitted that considering the longstanding litigation, even this court can interfere and modify appropriate punishment, we are of the view that it is appropriate for the 1st respondent to reconsider their decision with regard to quantum of punishment. We make it clear that the punishment of dismissal is not warranted taking note of the proved charge and all other materials placed before us.

8. In such circumstance, it is but proper for the 1st respondent to modify the order of the disciplinary authority and impose appropriate reasonable punishment instead of dismissal from service. On this ground, the impugned order of the 1st respondent dated 24.06.1999 is set aside and the matter is once again remitted to the 1st respondent for passing fresh orders with regard to quantum of punishment alone. The said recourse has to be completed within a period of three months from the date of receipt of a copy of this Order.

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Writ petition is allowed to this extent. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Secretary to Government,
Union of India,
Ministry of Home Affairs,
New Delhi.

2. The Director General,
Central Industrial Security Force,
Ministry of Home Affairs,
Block No.13, C.G.'s Complex,
Lodhi Road,
New Delhi-3.

2 CCS TO MR.K.N. NATARAJ, ADVOCATE SR 60319

1 CC TO MR.S. UDAYAKUMAR, SCGSC, SR NO 60529

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